

STATE OF NEW HAMPSHIRE  
WATER COUNCIL

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JUL 18 2005

Docket No. 03-10-WC

Appeal of the Conservation Law Foundation  
In Re: Water Quality Certificate No. 2003-001

**MOTION TO COMPEL**

NOW COMES the Conservation Law Foundation (CLF) and respectfully submits the following motion in the above-captioned appeal:

1. This appeal challenges a Section 401 Water Quality Certificate issued by the Department of Environmental Services (Department) for a proposed 79-lot residential subdivision in and among valuable wetlands and surface waters in Greenland.
2. The Water Council is scheduled to conduct an evidentiary hearing on this appeal on August 10, 2005.
3. CLF has submitted written questions to the Department in the form of interrogatories seeking information relevant to the Department's decision. It also has asked to conduct the depositions of two Department employees – Paul Piszczek and Paul Currier – who were involved in the decision at issue. CLF has made these requests – which are ordinary tools of pretrial/prehearing discovery – in preparation for the Water Council's evidentiary hearing.
4. The Department has refused to answer the interrogatories propounded by CLF, as well to allow the depositions of Mssrs. Piszczek and Currier. In doing so, the Department does not contend that CLF's discovery requests are unreasonable, burdensome, or in some way irrelevant to this appeal. Rather, it has simply taken the position that because the Water Council rules do not specifically provide for discovery, the Department need not respond to CLF's interrogatories or grant the depositions requested by CLF.
5. Again, the Water Council's hearing of this matter will be evidentiary and, therefore, will involve the testimony and cross-examination of witnesses. That being the case, it would be unreasonable and unfair for parties not to be allowed to fully prepare for the hearing through ordinary, reasonable tools of discovery. The written questions propounded by CLF in the form of interrogatories, and the depositions of key Department personnel, are ordinary discovery tools necessary for CLF to prepare for the Water Council's evidentiary hearing.
6. Moreover, at the prehearing conference in this appeal, during discussion relative to deadlines for motions, undersigned counsel specifically mentioned timing issues that could arise in the course of discovery. No party suggested at that time, nor at any other time during the prehearing conference, that discovery could not be conducted.

7. Finally, it is clear from materials in the Attorney General's files that discovery was contemplated in another Section 401 Water Quality appeal brought before the Water Council. *See attached.* The Water Council rules in effect at the time of that appeal are the same rules in effect today.

8. The Department's position that CLF is not entitled to use ordinary tools of discovery in preparation for the Council's hearing is manifestly unfair and must be corrected.

WHEREFORE, the Conservation Law Foundation respectfully requests that the Water Council issue an order allowing CLF to prepare for the evidentiary hearing of this matter by:

- A. Requiring the Department to answer interrogatories propounded by CLF;
- B. Requiring the Department to make Mssrs. Piszczek and Currier available for depositions;
- C. Requiring the Department to properly respond to reasonable discovery requests; and
- D. Granting such other relief as it deems fair and appropriate.

Respectfully submitted,

Conservation Law Foundation

By  **COPY**

Thomas F. Irwin, Esq.  
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(603) 225-3060

Date: July 18, 2005

CERTIFICATE OF SERVICE

A copy of this pleading has this day been forwarded via U.S. Mail to Jennifer J. Patterson, Esq., and Malcolm R. McNeill, Jr., Esq.

 **COPY**  
Thomas F. Irwin

THE STATE OF NEW HAMPSHIRE

WATER COUNCIL

IN RES

APPEAL OF OCEAN ROAD DEVELOPMENT CORPORATION

401 WATER QUALITY DENIAL

(GREAT BOG)

Docket Number 99-023 WC

**FOURTH PREHEARING ORDER**

The NH Water Council issues this Fourth Prehearing Order in response to the parties request to suspend the proposed schedule of dates.

THEREFORE, pursuant to Council Rules Env-WC 203.09, the Water Council, having found that no party shall be prejudiced by the requested delay, hereby grants a suspension of the previously-submitted schedule for a period of 60 days in order to allow the parties to better focus the issues in the appeal.

Pursuant to Env-WC 203.29, any party aggrieved by this decision may petition the Council for rehearing within thirty days of the date of this decision.

So Ordered,

**COPY**

*Jan Ball*  
*Appeal Clerk*  
Jan Ball, Chairman, NH Water Council

Dated: March 8, 2000

DATA Requests 3/30/00  
DATA Responses 4/10/00  
Disc. of Experts 4/21/00  
Complete Expert Depo & 5/17/00  
memo, brief & ... 5/17/00  
Hearing - 6/14, 15, 2000

8/14/00